IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Deva Ram. Versus State of Rajasathan.

S.B. Criminal Revision Petition No.440/2006 against the order dated 17-5-2006 passed by the Additional Sessions Judge, Sojat, district Pali, in Criminal Appeal No.48/1999.

...

Date of Order: June 01, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR.

Mr. Babu Lal Bishnoi, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

Notice for final disposal has been accepted by Mr. JPS Chaudhary, Public Prosecutor appearing for the State. With the consent of the learned counsel for the parties, the revision petition is being heard and decided at the admission stage.

The petitioner was convicted by the judgment and and order dated 24-11-1999 passed by the Judicial Magistrate, Sojat, district Pali (for short, "the trial Court" hereinafter) in Criminal Original Case No. 251/78 for the offence under Section 4/9 of the Opium Act and sentenced to undergo three months

rigorous imprisonment and a fine of Rs.100/-, in default of payment of fine further to undergo one months rigorous imprisonment. The judgment and order of the trial Court came to be challenged by the petitioner before the Additional Sessions Judge, Sojat, district Pali (for short, "the Appellate Court" hereinafter) in Criminal Appeal No. 48/1999. The Appellate Court, while maintaining the conviction under Section 4/9 of the Opium Act and sentence of fine against the petitioner, reduced the substantive sentence from three months rigorous imprisonment to two months rigorous imprisonment, in default of payment of fine from one month to 15 days. Hence this criminal revision.

At the very out-set, learned counsel for the petitioner submits that the petitioner does not want to challenge his conviction for the offence under Section 4/9 of the Opium Act; however, learned counsel has confined his arguments only to the quantum of sentence and submitted that the occurrence took place in the year 1978 and almost 28 years have elapsed since then; the petitioner has been facing protracted trial and thereafter the appeal and revision; the petitioner is presently aged about 73 years and he has shown me the Election Identity Card issued by the Election Commission of India issued on 2nd August, 2003 wherein the age of the petitioner has been shown as 70 years. Learned counsel further submits that the petitioner

remained in custody for 7 days during trial and thereafter from the date of judgment of the Appellate Court i.e. 17-5-2006, he is continuously in custody and, thus, the petitioner has suffered imprisonment for nearing one month.

Learned Public Prosecutor appearing for the State submits that the sentence awarded to the petitioner cannot be said to be excessive.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties. There is concurrent finding recorded by the Courts below holding the petitioner guilty for the offence under Section 4/9 of the Opium Act. The findings recorded by both the Courts below are based on sound and proper appreciation of the evidence and, therefore, the learned counsel for the petitioner rightly did not challenge the conviction of the petitioner. However, the occurrence is of the year 1978. The petitioner has been facing protracted trial and thereafter appeal and revision since 1978, i.e. nearly for 28 years. Petitioner is an old person aged about 73 years. He has also undergone the imprisonment for nearing a month. In these circumstances, in my view, the ends of justice would be met if the substantive sentence awarded to the petitioner is reduced to the period of imprisonment already undergone by him.

Consequently, the revision petition filed by the petitioner challenging his conviction and sentence of fine is

dismissed. While maintaining the conviction of the petitioner for the offence under Section 4/9 of the Opium Act and the sentence of fine, the substantive sentence of imprisonment awarded to the petitioner by the trial Court is reduced to the period of imprisonment already undergone by him. The petitioner is in jail. On depositing the amount of fine, the petitioner be set at liberty forthwith if not required in any other case. The bail application No.109/2006 seeking suspension of sentence stands disposed of.

(H.R. PANWAR), J.

mcs